

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2012080695

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012040441

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
MOTION TO CONTINUE

On April 4, 2012, the Newport-Mesa Unified School District (District) filed a Request for Due Process Hearing (complaint) against Student in Office of Administrative Hearings (OAH) case number 2012040441 (First Case). On May 1, 2012, OAH granted the parties' continuance request for the First Case setting the prehearing conference (PHC) for September 19, 2012, at 1:30 p.m., and the due process hearing (hearing) for September 26 and 27, 2012.

On August 21, 2012, Student filed a complaint against the District, in OAH case number 2012080695 (Second Case). On August 23, 2012, OAH issued a scheduling order for the Second Case setting mediation for September 25, 2012, the PHC for October 8, 2012, at 1:30 p.m., and the hearing for October 16, 2012, and continuing day-to-day, Monday through Thursday.

On September 11, 2012, the parties filed a joint Motion to Consolidate the First Case with the Second Case, and to continue the hearing dates in the consolidated matter to January 7 – 11, 2013.

APPLICABLE LAW AND DISCUSSION

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

The First Case and Second Case involve a common question of law and fact regarding the appropriateness of the District's March 10, 2011 multidisciplinary assessment. While Student's complaint alleges that the District March 17, 2011 individualized education program (IEP) denied her a free appropriate education, the central issue in both cases is the adequacy of this assessment that the District used to develop the March 17, 2011 IEP, which Student disputes in her complaint. Without consolidation, there would be a danger of inconsistent rulings. Therefore, the parties' joint Motion to Consolidate is granted as consolidation furthers judicial economy prevents inconsistent rulings.

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

While OAH has not granted the parties a continuance in the Second Case, OAH did grant the parties a four-month continuance in the First Case. The parties' motion does not provide any explanation why OAH should grant a nearly three-month continuance in the consolidated matter, especially since the First Case is close to hearing and the parties should have been getting ready for hearing in that matter. Accordingly, the parties' motion for a continuance is denied without prejudice. The parties may resubmit their request for a continuance and provide information as to why they need the matter continued to the proposed dates.

ORDER

1. The parties' Motion to Consolidate is granted.
2. All dates previously set in OAH Case number 2012040441 (First Case) are vacated. The consolidated cases shall proceed on the dates scheduled in OAH Case number

2012080695 (Second Case) which are: mediation for September 25, 2012, the PHC for October 8, 2012, at 1:30 p.m., and the hearing for October 16, 2012, and continuing day-to-day.

3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2012080695 (Second Case).

4. The parties' Motion to Continue is denied. All dates previously set for hearing in this matter shall remain as scheduled in OAH Case Number 2012080695 (Second Case).

Dated: September 14, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings